

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JERRY DAVID,

Petitioner,

Case No. 1:07-cv-83

v

HON. JANET T. NEFF

MARY BERGHUIS,

Respondent.

FINAL ORDER

This is a habeas corpus petition filed pursuant to 28 U.S.C. § 2254. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation, recommending that this Court dismiss the petition because it fails to state a federal claim. The matter is presently before the Court on Petitioner's objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Judgment pursuant to FED. R. CIV. P. 58.

First, petitioner objects to the Magistrate Judge's inclusion of trial facts that petitioner did not include in his petition. This objection has no merit. The Court is required to "determine the facts, and dispose of the matter as law and justice require," 28 U.S.C. § 2243, and the Magistrate Judge's Report provides a statement of facts relevant to the guidelines scoring claims petitioner advanced.

Second, petitioner "maintains that OV5 and OV11 were improperly denied by the trial

court.” Petitioner’s general statement merely constitutes a reiteration of the claims in his petition. The statement does not serve to identify petitioner’s issues of contention with the Magistrate Judge’s Report and therefore cannot be reviewed by this Court. See *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995); *Howard v. Secretary of Health and Human Servs.*, 932 F.2d 505, 508-09 (6th Cir. 1991). See also W.D. Mich. LCivR 72.3(b).

Despite having posited two objections for this Court to review, petitioner also “pray[s] that this Honorable court will withdraw my petition and later let me come back with federal issues and new issues,” a request that this Court denies. “Before presenting a second or successive petition, the petitioner must obtain an order from the appropriate court of appeals authorizing the district court to consider the petition as required by 28 U.S.C. § 2244(b)(3) and (4).” Rule 4, RULES GOVERNING § 2254 CASES.

Last, the Court must determine pursuant to 28 U.S.C. § 2253(c) whether to grant a certificate of appealability as to the issues raised. The Court must review the issues individually. *Slack v. McDaniel*, 529 U.S. 473 (2000); *Murphy v. Ohio*, 263 F.3d 466, 466-67 (6th Cir. 2001).

“When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. . . . Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further.” *Slack*, 529 U.S. at 484.

Upon review, this Court finds that reasonable jurists would not find the Court’s procedural

rulings debatable. A certificate of appealability will therefore be denied as to each issue petitioner has raised.

THEREFORE, IT IS ORDERED that the objections (Dkt 6) are DENIED and the Report and Recommendation of the Magistrate Judge (Dkt 5) is APPROVED and ADOPTED as the opinion of the Court.

IT IS FURTHER ORDERED that the petition for habeas corpus relief (Dkt 1) is DENIED for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that a certificate of appealability pursuant to 28 U.S.C. § 2253(c) is DENIED as to each issue asserted.

Date: June 2, 2008

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge